

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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| In the Matter of Lake Region Water and Sewer |) | |
| Company's Application to Implement a General |) | Case No. SR-2013-0459 |
| Increase in Water and Sewer Service |) | |

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| In the Matter of Lake Region Water and Sewer |) | |
| Company's Application to Implement a General |) | Case No. WR-2013-0461 |
| Increase in Water and Sewer Service |) | |

**LAKE REGION WATER & SEWER COMPANY'S
LIMITED APPLICATION FOR REHEARING**

Comes now Lake Region Water & Sewer Co. (Lake Region), by and through its attorneys, and pursuant to Section 386.500 RSMo¹ and 4 CSR 240-2.160, moves and applies for limited rehearing of the Commission's Report and Order entered in this case on April 30, 2014 (hereinafter "the Report and Order"). In support, Lake Region submits the following to the Commission:

1. On April 30, 2014 the Commission issued its Report and Order authorizing and permitting Lake Region to file tariff sheets sufficient to recover the revenue approved in the Order. The Report and Order included a ruling concerning the Commission's jurisdiction over availability fees. The Report and Order bears an effective date of May 30, 2014. This application is therefore timely under Section 386.500 and 4 CSR 240-2.160.

2. By this application, Lake Region does not seek rehearing concerning the authority granted to the Company to implement the rate relief outlined in the Report and Order. Lake Region limits its request for rehearing strictly to the Commission's conclusion that it has statutory authority, hence jurisdiction, to consider availability fees, which are fees charged by a

¹ Unless otherwise indicated, statutory citations herein are to RSMo 2000 or its current supplement.

non-utility entity for non-utility services, as defined by statute, in determining whether Lake Region's proposed rate increase is just and reasonable.

3. The Report and Order is the second of two inventive and elaborate orders in which the Commission attempts to assert its jurisdiction to regulate availability fees. In the first, the Commission ordered a plenary rulemaking proceeding to create new rules and modify older ones (cited below) as a precursor to decreeing that it had jurisdiction or declining jurisdiction. Now, the rulemaking has been discarded by the Report and Order in this case, ostensibly because of differences between the evidentiary record in this matter and the Lake Region rate case that preceded it. To the contrary, the facts and circumstances respecting the charging and collection of availability fees on Shawnee Bend, Lake of the Ozarks, have not varied in the several years since the last case. Nonetheless, the Commission has concluded on evidentiary grounds that in this case it may consider availability fees as it reviews Lake Region's revenue requirement. Stated differently, the Commission concludes, and erroneously so, that it may consider revenue from unregulated enterprises in determining how a utility's cost of regulated service may be covered in rates.

4. With regard to its conclusion that the Commission may assert jurisdiction over the charging and collection of availability fees, and consider such fees as revenue of a regulated water or sewer company like Lake Region, the Order is unlawful, unjust and unreasonable and just grounds exist for the Commission to rehear the jurisdictional issue.

5. At page 37 of the Report and Order the Commission addresses, and then rejects, Lake Region's arguments that the statutory definition of "service" found in Section 386.020(48), as extended into Section 386.250(6), forms the limits on the Commission's jurisdiction over availability fees. The Commission determined that because it was not promulgating rules in

connection with the rate case, the provisions of Section 386.250(6) were irrelevant and the definition of “service” need not be analyzed to discern its jurisdiction.² Thereafter at pages 38-39 of the Order, the Commission declared:

The Commission has personal jurisdiction over Lake Region because it is a water and sewer corporation and a public utility. The Commission has subject matter jurisdiction because Lake Region filed a rate case. Consequently, the Commission’s jurisdiction is clear, and the only real question is whether the Commission has the statutory authority to consider the availability fees in determining whether Lake Region’s proposed rate increase is just and reasonable. In deciding whether the rate proposed is appropriate, the Commission can consider any facts it determines to be relevant. Moreover, Missouri’s prohibition against single-issue ratemaking bars the Commission from allowing a public utility to change an existing rate without consideration of all relevant factors, such as operating expenses, revenues,³ and rates of return. Lake Region’s revenue is relevant to its rate case, and whether the availability fees were included as part of Lake Region’s revenue prior to 1998 is one of the disputed facts in this case. So, the Commission has statutory authority to consider whether Lake Region’s revenue included availability fees in the past and, if so, whether such revenue should be imputed to Lake Region in the future in setting Lake Region’s rates.

6. Lake Region first notes that the term “service” is not confined to only two statutes within the Public Service Commission Law. “Service,” as defined, anchors the Commission’s existence. For example, as Section 386.010, the title of its enabling legislation, provides:

This chapter shall be known as the “Public Service Commission Law”, and shall apply to the public *services*, and to the public *service* corporations, persons and public utilities mentioned and referred to in this chapter. [emphasis added]

The Commission is limited to the hearing of complaints that are strictly about the price and quality of water and sewer *service*, as provided in Section 393.260.1. In its own rules, the Commission defines “Sewer service” as the “[r]emoval and treatment of sewage.” See, 4 CSR

² The Commission’s reasoning prompts other queries. If the Commission lacks rulemaking authority over non-services (see footnote 5), does the Commission retain jurisdiction to adjudicate issues concerning, or even set rates, for non-services? Lake Region submits the answer is no. If the Commission lacks rulemaking authority on a subject, it lacks authority to render decisions on that subject in adjudications.

³ Although case authority does not set out the limitation expressly, the consideration of “revenues” as a relevant factor means “operating” revenues in like manner as “operating” expenses are a relevant factor. A public utility company’s revenue requirement should be based upon factors within the Commission’s jurisdiction. Unregulated revenue, (nonoperating revenue) is not one of those factors.

240-3.300(3); 4 CSR 240-60.010 (M).⁴ The Public Service Commission Law does not apply to “non-services”⁵ offered by a regulated company.

7. In its previous cases analyzing availability fees in general, and the availability fees referred to in the evidence in this matter in particular, the Commission determined that: 1) it lacked jurisdiction over the charging and collection of those fees, and 2) absent a rulemaking procedure concerning the matter, availability fees were not within the definition of “service” set out in Section 386.020.⁶ Nothing in the Report and Order suggests that the Commission has departed from those specific determinations. Availability of utility infrastructure and the charging and collection of availability fees is a “non-service.”

8. If availability fees are not charged for a “service” regulated by the Commission pursuant to its statutory authority, they cannot be legally or logically relevant to a computation of a company’s cost of service. By ruling that availability fees---fees for a non-service---are relevant to Lake Region’s revenue, the Commission has set itself free from its jurisdictional base. If the Commission has such authority, then presumably it may exercise the correlative authority to apply all income of a regulated company, from whatever source derived whether regulated or not, to its cost of “service.” This then reformulates the basic ratemaking equation. As the Commission recites on page 9-10 of the Order:

The revenue requirement calculation can be identified by a formula as follows: Revenue Requirement = Cost of Providing Utility Service or $RR = O + (V - D) R$ where,

RR = Revenue Requirement;

O = Operating Costs; (such as fuel, payroll, maintenance, etc.,

⁴ There is no comparable definition for “water service” in the Commission’s rules but Lake Region contends that given the definition of “sewer service” duly promulgated by the Commission, the meaning of “water service” is similarly restricted to “the treatment and distribution of potable water.”

⁵ “Non-service(s)” in this application for rehearing means and refers to a service(s) that fall outside the definition in Section 386.020(48).

⁶ The history of the Commission’s treatment of availability fees in Lake Region’s previous rate case and in other cases was chronicled in Lake Region’s post hearing briefs and will not be repeated here.

Depreciation and Taxes);
V = Gross Valuation of Property Used for Providing Service;
D = Accumulated Depreciation Representing the Capital Recovery
of Gross Property Investment.
(V – D) = Rate Base (Gross Property Investment less Accumulated
Depreciation = Net Property Investment)
R = Overall Rate of Return or Weighted Cost of Capital
(V - D) R = Return Allowed on Net Property Investment

If the Commission's erroneous reasoning is accepted, the revenue requirement calculation has been changed to: Revenue Requirement = Cost of Providing Utility Service - (minus) Non Service revenue the Commission deems relevant. To the extent the Order expands the Commission's jurisdiction to potentially allow the application of availability fees to Lake Region's revenue requirement in the future, it is unlawful, unreasonable and unjust.

9. The Commission considered availability fees a relevant inquiry because a fact purportedly in dispute was whether the availability fees were included as part of Lake Region's revenue prior to 1998.⁷ Although there is evidence that Lake Region's books showed entries for availability fee revenue related to water and/or sewer systems on Shawnee Bend in the years 1995-1998, there is no evidence in the record establishing that Lake Region owned the rights to those fees. As the Commission determined in the Report and Order the evidence in the record was insufficient to show that Lake Region or its predecessor imprudently assigned the availability fees to its shareholders in 1998 or used that revenue for utility purposes.

10. As the Western District Court of Appeals explained in another case in which the Commission was found to have exceeded its statutory authority and jurisdiction:

The PSC "is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto." *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044, 1046 (Mo. banc 1943). "Neither convenience, expediency or necessity are proper matters for consideration in the determination

⁷ Report and Order at p. 38.

of whether or not an act of the commission is authorized by statute.” *State ex rel. Mo. Cable Telecomms. Ass’n v. Mo. Pub. Serv. Comm’n*, 929 S.W.2d 768, 772 (Mo.App.1996).

State ex rel. Cass County v. Public Service Commission, 259 S.W.3d 544, 547 -548 (Mo.App. W.D. 2008). The Commission has erroneously reached the determination that it may exert some level of authority over availability fees, a determination contrary to its enabling legislation or any power reasonably incidental thereto.

CONCLUSION

On the basis of the above and foregoing, Lake Region respectfully requests that the Commission grant this limited application for rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via email, on this 29th day of May, 2014, to Kevin Thompson at kevin.thompson@psc.mo.gov; Tim Opitz at timothy.opitz@psc.mo.gov; General Counsel’s Office at staffcounsel@psc.mo.gov; Christina Baker at christina.baker@ded.mo.gov; and Office of Public Counsel at opcservice@ded.mo.gov.

/s/ Mark W. Comley